

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

MARCH 12, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**Nos. 95-1883-CR
95-1884-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WILLIAM R. GATES,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. William Gates appeals his conviction for robbery as a party to the crime and battery to an inmate, having pleaded no contest to the charges. Gates helped plan the robbery and drove the getaway car for an accomplice, who robbed a young woman near an outdoor bank depository. The trial court imposed a ten-year sentence on the robbery charge and a five-year consecutive sentence on the battery to an inmate charge. These sentences

exceeded not only both counsels' recommendations, but also the sentencing guidelines. By postconviction motion, Gates sought to withdraw his no contest plea on the ground that it was not knowing and voluntary concerning the potential maximum sentence. He claimed that the trial court had never explained the maximum sentences at the plea hearing and that he had not otherwise understood such subject matter. The trial court rejected this claim, finding that Gates had known and understood the maximum sentences for each crime at his plea hearing. On appeal, Gates argues that this finding was inaccurate and that his sentence was excessive. We reject these arguments and therefore affirm his conviction.

In order to withdraw no contest pleas, defendants must show that such pleas were unknowing and involuntary. *State v. James*, 176 Wis.2d 230, 238, 500 N.W.2d 345, 348 (Ct. App. 1993). Pleas meet this standard if defendants lacked sufficient awareness of the relevant circumstances and likely consequences that could follow, including the range of punishment. *Id.* Defendants may withdraw pleas after sentencing only to prevent a "manifest injustice." *State v. Truman*, 187 Wis.2d 621, 624, 523 N.W.2d 177, 178 (Ct. App. 1994). Defendants seeking postsentencing withdrawal must show the manifest injustice by clear and convincing evidence. *Id.* at 624, 523 N.W.2d 179. Moreover, courts need not deeply pursue the question of the defendant's innocence on postsentencing withdrawals. *State v. Booth*, 142 Wis.2d 232, 238, 418 N.W.2d 20, 22 (Ct. App. 1987). Trial courts have considerable discretion in their postsentencing plea withdrawal decisions. *State v. Canedy*, 161 Wis.2d 565, 579, 469 N.W.2d 163, 169 (1991); *Booth*, 142 Wis.2d at 237, 418 N.W.2d at 22. We will uphold the trial court's findings on such matters unless they are clearly erroneous. *State v. Johnson*, 193 Wis.2d 382, 387, 535 N.W.2d 441, 442 (Ct. App. 1995). The trial court is the final arbiter on credibility issues. *State v. Marty*, 137 Wis.2d 352, 359, 404 N.W.2d 120, 123 (Ct. App. 1987).

The trial court reasonably found that Gates had understood the potential sentences at the time he pleaded no contest. First, Gates admitted at the postconviction hearing that he had understood the robbery charge's ten-year maximum sentence and had expected a ten-year sentence. Second, Gates had completed a plea questionnaire. This document disclosed that five years was the maximum sentence for inmate battery and that the trial court could sentence Gates to the maximum despite counsels' recommendations. Although Gates maintained at the postconviction hearing that he never read the questionnaire,

the trial court reasonably rejected this claim. At the plea hearing, Gates stated that he fully discussed the questionnaire with counsel. He had also initialed the questionnaire's paragraphs covering the potential sentence and had admitted that he read the criminal complaint. The complaint stated the maximum sentence in boldface print. In addition, his counsel stated in the questionnaire that Gates understood every paragraph, and the trial court had observed Gates discuss the questionnaire with counsel for seventeen minutes in the plea hearing. Last, having observed Gates at both hearings, the trial court essentially made a credibility determination; it could reasonably disbelieve Gates' postjudgment allegations. In short, the postconviction court reasonably found Gates' plea knowing and voluntary.

The trial court also issued an appropriate sentence. The trial court's sentencing decision was discretionary. *State v. Macemon*, 113 Wis.2d 662, 667-68, 335 N.W.2d 402, 405-06 (1983). Sentencing courts abuse their discretion whenever they give too much weight to one factor without regard to contravening considerations. *Harris v. State*, 75 Wis.2d 513, 518, 250 N.W.2d 7, 10 (1977). However, sentencing courts have discretion to determine the weight to give to each of these factors. *Ocanas v. State*, 70 Wis.2d 179, 185, 233 N.W.2d 457, 461 (1975). Sentencing courts may base their sentences on any of the factors after all have been reviewed. *Anderson v. State*, 76 Wis.2d 361, 366-67, 251 N.W.2d 768, 771 (1977). Relevant sentencing factors include the gravity of the offense, the protection of the public, the rehabilitative needs of the defendant, and the interests of deterrence. *State v. Sarabia*, 118 Wis.2d 655, 673-74, 348 N.W.2d 527, 537 (1984). Like other discretionary decisions, sentences must have a reasonable basis in the record and demonstrate a logical process of reasoning based on the facts of record and proper legal standards. *McCleary v. State*, 49 Wis.2d 263, 277, 182 N.W.2d 512, 519-20 (1971).

Here, the trial court properly considered all relevant factors and issued a sentence commensurate with the facts. The trial court placed emphasis on the nature of the crime. Gates had taken a substantial role in planning and executing a nighttime robbery of a young woman using an outdoor bank depository. From the facts of the incident, the trial court inferred that Gates and his accomplices would have resorted to violence if the woman had furnished more resistance. The inmate Gates battered was a robbery accomplice who had testified against Gates at Gates' preliminary hearing. Gates battered the inmate as an act of retaliation and intimidation. Gates also had a substantial criminal

and juvenile record. These facts helped show his dangerousness and his inability to conform his behavior to minimum societal standards. We are satisfied that the trial court's ten-year and five-year consecutive sentences were proportionate with Gates' character, his rehabilitative needs, the seriousness of the offenses, the public's right to protection and the interests of deterrence. Finally, the fact that the combined sentence departed from the sentencing guidelines requires no resentencing. This matter is not appealable, *State v. Halbert*, 147 Wis.2d 123, 132, 432 N.W.2d 633, 637 (Ct. App. 1988), and in any event, the circumstances fully justified Gates' sentences. In sum, the trial court reasonably exercised its sentencing discretion.

By the Court. – Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.